

Exhibit D

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AMIN REALTY, L.L.C.,

Plaintiff,

-against-

TRAVELERS PROPERTY CASUALTY COMPANY,

Defendant.

05 CV 195 (DGT-RLM)

**TRAVELERS' RESPONSE TO
PLAINTIFF'S RULE 56.1
STATEMENT**

Defendant The Travelers Indemnity Company ("Travelers"), sued herein erroneously as "Travelers Property Casualty Company," by its attorneys, Lazare Potter Giacovas & Kranjac LLP, hereby respectfully submit this Statement Pursuant to Local Rule 56.1 in opposition to Plaintiff's cross-motion for summary judgment. In connection with the Travelers' motion for summary judgment, Defendant submitted a statement of undisputed material facts which is incorporated herein by reference. Plaintiff did not dispute any of the facts alleged in said statement. The following opposition statement is meant to only address those so-called "undisputed" facts in Plaintiff's Rule 56.1 Statement ("Plaintiff's Statement") which are material and disputed by Travelers. Notwithstanding the following, the undisputed material facts set forth in Travelers' October 7, 2005 Rule 56.1 Statement confirm that summary judgment against Plaintiff is appropriate.

1. Defendant disputes the facts alleged in Paragraph 2 of Plaintiff's Statement in that Defendant The Travelers Indemnity Company did not issue that policy (which is attached to

Exhibit A-2

Defendant's October 7, 2005 Motion for Summary Judgment

**United State District Court
Eastern District of New York
Index No.: 05 CV 195 (DGT)**

Amin Realty, L.L.C.,

-against-

Travelers Property Casualty Company.

COMMERCIAL GENERAL LIABILITY

- (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment".
- h. Mobile Equipment
"Bodily injury" or "property damage" arising out of:
 - (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
 - (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.
- i. War
"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.
- j. Damage to Property
"Property damage" to:
 - (1) Property you own, rent, or occupy;
 - (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
 - (3) Property loaned to you;
 - (4) Personal property in the care, custody or control of the insured;
 - (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
 - (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

k. Damage to Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage to Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage to Impaired Property or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall of Products, Work or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";